

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN DAVID COBOS,

Plaintiff,

vs.

No. CV 18-00160 MV/SCY

WARDEN BETTY JUDD,
ALL OF HER SECURITY, and
MEDICAL STAFF/RESPONSIBLE AS
“PERSONS” WHO ARE LIABLE FOR
THEIR ACTIONS

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on the Prisoner Civil Rights Complaint filed by Plaintiff John David Cobos, on February 16, 2018. (Doc. 1). The Court dismisses this case without prejudice for failure to comply with statutes and Court Orders and failure to prosecute.

Plaintiff John David Cobos filed this civil rights case under 42 U.S.C. Section 1983 on February 16, 2018. Plaintiff neither paid the \$400.00 filing fee nor submitted an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. Section 1915. On February 22, 2018, the Court ordered Plaintiff to cure this deficiency within 30 days by either paying the \$400.00 filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 2). The Order advised Plaintiff that, if he failed to cure the deficiency within the 30-day time-period, the Court could dismiss this proceeding without further notice. (Doc. 2 at 1). The Court also sent Plaintiff the forms for submitting an application under Section 1915. (Doc. 2 at 2). More than 30 days elapsed after entry of the Court’s Order to Cure Deficiency and Plaintiff did not pay the \$400 filing

fee, submit an application to proceed under Section 1915, or otherwise respond to the Court's February 22, 2018 Order.

The Court entered its first Order to Show Cause on March 30, 2018. (Doc. 4). The Order to Show Cause directed that Plaintiff show cause within 30 days why the case should not be dismissed for failure to pay the filing fee, submit the application to proceed, or respond to the Court's Order to Cure. (Doc. 4). On April 4, 2018, Cobos filed an Application to Proceed in the District Court Without Prepaying Fees and Costs. (Doc. 5). The Court then quashed the Order to Show Cause, granted Cobos leave to proceed without prepayment of fees or costs, and ordered Cobos to make an initial partial payment under Section 1915(b) on April 11, 2018. (Doc. 6). The April 11, 2018 Order directed Cobos to pay the initial partial payment of \$18.80 or demonstrate why he should be relieved of the obligation to make the payment within 30 days of entry of the Order. (Doc. 6).

More than 30 days elapsed after entry of the April 11, 2018 Order, and Plaintiff Cobos did not pay the initial partial payment or otherwise respond to the Order. The Court entered a Second Order to Show Cause on June 14, 2018. (Doc. 7). The Second Order directed Plaintiff Cobos to show cause why the case should not be dismissed for his failure to make the initial partial payment required by Section 1915(b) and the Court's April 11, 2018 Order. (Doc. 7). On June 27, 2018, Plaintiff Cobos filed a letter response to the Second Order to Show Cause. (Doc. 8). Plaintiff's Response argued that his April 14, 2018 Application to Proceed was timely. (Doc. 8 at 1). It is clear from the Court's April 11, 2018 Order granting the Application to Proceed that the Court did not question the timeliness of the Application. Cobos' June 27, 2018 letter is not responsive to the Court's June 14, 2018 Second Order to Show Cause and does not explain why Cobos has not paid the initial partial payment required by the April 11, 2018 Order.


When a prisoner is granted leave to proceed *in forma pauperis*, Section 1915 provides:

“The court **shall** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.”

28 U.S.C. § 1915(b)(1) (emphasis added). Plaintiff’s six-month inmate account statement shows that Plaintiff had an account balance sufficient to pay the initial partial payment. (Doc. 5 at 3-4). Plaintiff Cobos has not paid the \$18.80 initial partial payment or shown cause why he should be relieved of the obligation to pay.

The Court’s April 11, 2018 and June 14, 2018 Orders both directed Plaintiff Cobos to make the required partial payment under Section 1915(b)(1) or show cause why the payment should be excused. (Doc. 6, 7). Plaintiff Cobos has failed to make the initial partial payment and to comply with the Court’s Orders. The Court may dismiss an action under Rule 41(b) for failure to prosecute or to comply with statutes, the rules of civil procedure, or court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court will dismiss this case for Plaintiff’s failure to comply with Section 1915(b) and the Court’s April 11, 2018 and June 14, 2018 Orders and for failure to prosecute this proceeding.

IT IS ORDERED that Prisoner Civil Rights Complaint filed by Plaintiff John David Cobos, on February 16, 2018. (Doc. 1) is **DISMISSED** without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with 28 U.S.C. Sections 1914 and 1915, failure to comply with the Court’s April 11, 2018 Order and June 14, 2018 Second Order to Show Cause, and failure to prosecute this case.


UNITED STATES DISTRICT JUDGE